IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5302 of 2004
Date of Decision: 3.11.2006

Nispal Kaur and Anr. ...Petitioners

Vs.

Kulwant Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Arun Jain, Advocate,
with Mr.Naveen Mahajan, Advocate,
for the petitioners.

Mr.J.R.Mittal, Senior Advocate with
Mr.Sachin Bedi, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

By way of present revision petition the petitioners have challenged the order dated 3.9.2004 passed by the learned Additional Civil Judge (Senior Division), Kharar vide which the application moved under Section 28 of the Specific Relief Act (for short the Act) and objections against warrant of possession have been dismissed.

The plaintiff-respondent had filed a suit for possession by way of specific performance of contract dated 25.10.1988 in respect of Plot

No.649 Phase-VI SAS Nagar, Mohali after receiving the balance amount of Rs.2,18,000/-. The parties had entered into an agreement for sale of plot for a total sale consideration of Rs.23,000/- out of which Rs.5,000/- were paid as earnest money on 25.10.1988 and the balance sale consideration was to be paid on execution of the sale deed which was to be done on 30.11.1988. As the petitioners herein had failed to execute the sale deed, a suit for specific performance was filed which was contested by the petitioners. However, by way of judgment and decree dated 7.9.1991 the suit filed by the plaintiff-respondent for possession as owner through specific performance of agreement dated 25.10.1988 for selling the Plot No.649 Phase-VI SAS Nagar, Mohali after paying the balance consideration of Rs.2,18,000/- (Rupees two lacs and eighteen thousand only) was decreed with costs. The defendant-petitioners were directed to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.2,18,000/- (Rupees two lacs and eighteen thousand only) within a period of three months. The suit was, accordingly, decreed with costs.

The petitioners herein filed an appeal against the judgment and decree passed by the learned Trial Court. However, the said appeal was dismissed by the learned Additional District Judge, Ropar on 22.3.1996. Dis-satisfied by the judgment and decree the petitioners herein came up in appeal to this Court by filing Regular Second Appeal No.1806 of 1996. Vide order dated 23.7.1996 this Court was pleased to dismiss the appeal.

In spite of the decree having been passed it seems that the petitioners were raising construction over the plot and accordingly the respondent-plaintiff filed a suit for permanent injunction restraining the petitioners herein from raising any type of construction/structure over Plot

No.649 Phase-VI SAS Nagar, Mohali and for mandatory injunction directing the petitioners to remove construction/structure, if any, raised on Plot No.649 Phase-VI SAS Nagar, Mohali.

After the dismissal of the Regular Second Appeal by this Court the respondent-decree holder filed an execution application in the Trial Court/Executing Court in which objections were filed by Gurdeep Singh by taking a plea that the decree was conditional and was subject to deposit of Rs.2,18,000/- by the decree holder within 3 months from the date of decree i.e. 7.9.1991. Therefore, the objections were raised that after the expiry of three months the decree had become null and void as the decree holder had not deposited the amount till then.

Notice of the objection petition was given to the decree holder who contested the objections. The learned Additional Civil Judge (Senior Division) by way of order dated 20.12.2001 came to the conclusion that the decree sheet nowhere revealed that the decree holder was required to deposit the remaining balance amount within 3 months. The Court further came to the conclusion that rather the directions were given by the Court to the petitioners herein to execute the sale deed within a period of 3 months after receiving the balance sale consideration and accordingly dismissed the objections vide order dated 20.12.2001. After the dismissal of the objections on 20.12.2001 the respondent decree holder deposited the balance amount and accordingly, the Reader of the Court was appointed as Local Commissioner to execute the sale deed in favour of the decree holder. The order dated 1.6.2003 reads as under:-

> "1.6.2001 Present: Counsel for the parties.
>
> The balance sale amount has been deposited by

> the decree holder qua the proposed sale deed. No objection has come on record now. The reader of this Court is appointed as Local Commissioner to execute the sale deed in favour of the decree holder on behalf of the J.D. As per the order of the Court. His fee is assessed to be Rs.1000/- which will be pai9d by the decree holder. Now, case is adj. To 20.7.20002 for awaiting the report of L.C. Further the necessary expenses in this respect will be borne by the decree holder."

It is also revealed from the record that the order dated 20.12.2001 was not challenged and it has attained finality. The decree holder, thereafter, filed a draft sale deed on 5.3.2002 in the Executing Court but no objections were filed. Accordingly, directions were issued to the decree holder to deposit the balance amount which was done on 24.5.2002 and the Local Commissioner, accordingly, executed the sale deed on 4.7.2002 and the execution application was, accordingly, disposed of as partly satisfied. Thereafter, an application was moved on 27.27.2002 before the Executing Court for warrant of possession of the property in question. However, the petitioners chose to absent themselves and accordingly, they were proceeded ex parte. Without getting the ex parte order set aside objections were filed on 5.4.2002 under Section 28 of the Act which was contested by the decree holder. Those objections were dismissed and the said order is under challenge in the present revision petition.

In the objections the petitioners herein prayed that the decree holder may kindly be directed to pay the costs of constructed house on the plot in dispute before taking the delivery of possession and to get rectified

the sale deed also. The petitioners further prayed that either the decree/contract dated 25.10.1998 may kindly be cancelled or the decree holder may be directed to pay the costs of construction of Rs.8.5 lacs and interest on the amount which was not deposited by the decree holder and also the amount invested by the Judgment Debtor on construction in the interest of justice.

By way of impugned order the learned Executing Court came to the conclusion that the objections with regard to the the decree being un-executable was dismissed by the Executing Court on 12.12.2001 and accordingly, did not consider the said objections any further. However, as regards the claim regarding costs of construction was concerned it was noticed that the Local Commissioner was appointed who had noticed that the Judgment Debtor had constructed two rooms with attached baths and wood work was incomplete. It was also noticed that the construction was three months' old. The said report was filed on 22.5.2000 whereas the suit of the plaintiff-decree holder was decreed on 7.9.1991. Thus, the Court held that the construction was raised after passing of the decree and therefore, the Judgment Debtor cannot take any benefit of the construction and accordingly, the objections were dismissed.

Mr. Arun Jain, learned counsel for the petitioners vehemently argued that in the present case the agreement to sell was executed on 25.10.1988 when only a meager sum of Rs.5,000/- was paid as earnest money. The balance sale consideration of Rs.2,18,000/- was agreed to be paid at the time of the execution of the sale deed. The suit was decreed on 7.9.1991 whereas the Regular Second Appeal was finally dismissed on 23.7.1996 but in spite of this the amount of Rs.2,04,000/- was paid on

24.5.2002 i.e. after a period of 10 years and another sum of Rs.17,000/- was deposited on 1.7.1992.

The contention of Mr. Arun Jain, learned counsel for the petitioners was that in view of the delay in depositing the amount the contract was liable to be cancelled under Section 28 of the Act. In support of his contention learned counsel for the petitioners placed reliance on the judgment of Hon'ble Supreme Court reported in **V.S.Palanichamy Chettiar Firm Vs. C.Alagappan 1999 (1) RCR (Civil) 634** wherein in para No.12 of the judgment it is held as under:-

> " In **K.S.Vidyanadam and others Vs. Valravan 1997 (3) SCC1: 1997 (2) RCR (Civil) 312(SC)** this Court referred to the circumstances to be considered in exercising the discretionary power of the Court to be immovable property. The Court was of the view that in spite of the fact that suit was filed within the period of limitation as prescribed in Article 54 of the Limitation Act, 1963, the Court can nevertheless see that even where time is not the essence of the contract, the plaintiff must perform his part of the contract in reasonable time and by looking at all the relevant circumstances including the express terms of contract and nature of the property. The case before the Supreme Court was an appeal by the defendants-vendees who had suffered decree of specific performance of agreement for sale of their immovable property located in Madurai in the State of Tamil Nadu. The Court noticed that in case of urban properties in India, it is well known that their prices have been going up

sharply over the last few decades. The Court then held as under:-

> "In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff 2-1/2% years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices- according to the defendants, three times – between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff."

The Court relied upon the decision of the constitution Bench **in Chand Rani Vs. Mamal Rani, 1993 (1) SCC 519: 1993(2) RRR 46 (SC)"**

Mr. Arun Jain, learned counsel for the petitioners also placed reliance on the judgment of this Court in the case of **Chanda Vs. Rattni and another (1999-3) P.L.R. 135** to contend that where the plaintiff failed to deposit the balance sale consideration within the period fixed by the Court the defendant has a right to ask the Court to rescind the agreement to sell because of the default committed by the plaintiff.

Mr. Arun Jain, learned counsel for the petitioners, thereafter, by placing reliance on the judgment of this Court in the case of **Ravinder Kumar Vs. Jaswant Singh & Others 1990 Civil Court Cases 397** contended that it was necessary for the Trial Court to frame an issue and

permit the parties to lead evidence and therefore, the impugned order which has been passed in a summary manner could not be sustained.

Mr. Arun Jain, learned counsel for the petitioners, thereafter argued that in the present case deposit was made by the decree holder without application for extension of time. The Court merely permitted the decree holder to deposit the money without notice to the petitioners herein and therefore, the deposit made by the decree holder could not be said to be a valid deposit to seek warrant of possession.

Finally, the contention of Mr. Arun Jain, learned counsel for the petitioners was that on account of inaction on the part of the decree holder to deposit the money along with execution application the petitioners herein raised construction and therefore, the respondent-decree holder was estopped by his conduct from seeking the warrant of possession.

Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder contended that the objection petition filed by the petitioners was not competent as the earlier objections filed by the petitioners were rejected by the Executing Court and the said order had attained finality. In support of his contention Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder placed reliance on the judgment of Hon'ble Supreme Court in the case of **R.P.A. Valhammal Vs. R.Palanichami Nadar and others AIR 1997 SC 1996,** wherein it has been held that the objections to the execution of the decree can be made only once and not repeatedly. He relied upon the judgment of Hon'ble Supreme Court in **R.P.A. Valhammal's case (supra)** to contend that the objections with regard to the execution could not be raised after the title has been lost.

The contention of Mr. J.R.Mittal, learned senior counsel for

the respondent-decree holder was that the sale deed has already been executed in favour of the decree holder and therefore, it was not open to the petitioners to raise the objections in the execution proceedings at this stage.

Learned senior counsel, thereafter contended that the objections raised by the petitioners that deposit was not made within the stipulated period which entitles the petitioners to seek cancellation of the contract cannot be sustained as in the present case there was no default clause in the decree passed by the Court and therefore, it was open to the decree holder to deposit the amount at any time. The contention of learned senior counsel for the respondent-decree holder was that in any case in view of the order dated 1.6.2002 the court has directed the decree holder to deposit the amount and therefore, it has to be presumed that the time if any fixed was extended by the Court. In support of this contention reliance was placed on the judgment of this Court in **Amar Nath Jain Vs. Ram Parkash Dhir (1987-1) P.L.R.490**.

Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder thereafter placed reliance on the judgment of this Court in **Smt.Rajinder Kaur Vs. Shri S.K.Malhotra (2000-1) P.L.R. 316** to contend that if the stay was granted by the Appellate Court then the decree holder was under no obligation to deposit the balance money within the given time as the Appellate Court has the power to pass fresh orders regarding the deposit of balance sale consideration.

Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder also relied upon the judgment of this Court in **Jai Dev Vs. Prem Singh Sanini 2001 (2) RCR (Civil) 561** to contend that if in the decree there is no stipulation that if the decree holder does not deposit the

remaining sale consideration within a period of 3 months the suit of the plaintiff stands dismissed. In that situation, it is open to the court to extend the time for deposit of sale consideration. Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder placed reliance on the judgment of Hon'ble Supreme Court in the case of **B.Gangadhar Vs. B.G.Rajalingam (1995) 5 Supreme Court Cases 238** wherein it was held that where the decree has become final and in spite of that some shops are constructed on the suit property and tenants are inducted into possession pendente'lite then, however, in the absence of injunction the Executing Court could direct the demolition of the said shops to give possession to the party and the third party would also be bound by the order of the Executing Court and therefore, the contention of the learned senior counsel for the respondent was that no benefit of construction can be given to the petitioner.

Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder thereafter, placed reliance on the judgment of this Court in **Santa Singh Vs. Darshan Singhand others 1998 (II) P.L.R. 651** to contend that if the residential house is constructed on the land under the decree, the decree holder is not bound by such construction and the petitioner was not required to be given an opportunity for removing the said illegal construction. Thus, the contention of learned senior counsel is that the all the points raised by the petitioners herein do not carry any force especially when under the decree it was the duty of the petitioners to have executed the sale deed on receipt of the money in terms of the decree.

Mr. J.R.Mittal, learned senior counsel for the respondent-decree holder finally contended that the application under section 28 of the

Act was not competent before the Executing Court. He argued that an appeal was competent against the rejection of objections and therefore, the present revision petition was otherwise not competent.

I have considered the arguments raised by the learned counsel for the parties.

I do not find any force in the contention of the learned counsel for the petitioners. The objections under section 28 of the Act was not available to the petitioners as the similar objections had already been rejected by the Court on 20.12.2001 and therefore, in view of the law laid down by the Hon'ble Supreme Court in **R.P.A. Valhammal's case (supra)** the second objection on the same ground was not available.

Similarly the objections of the petitioners that they were entitled to costs of construction raised by the petitioners cannot be sustained in view of the law laid down in the case of **Santa Singh's case (supra)** and therefore, learned Executing Court was right to hold that the petitioners could not take any benefit from the construction raised after the passing of the decree.

The contention of Shri Arun Jain, learned counsel for the petitioners qua estoppel is also misconceived. Firstly, for the reason that the respondent decree holder had filed a suit restraining the respondents from raising construction over the property in dispute. Even otherwise, nothing has been shown as to the change of position of petitioner on account of explicit act of the decree holder on the basis of which it could be said that the petitioner had changed his position to his disadvantage.

As already observed, in the present case the permission was granted by the Court to deposit amount and after passing of the order dated 20.12.2001 to the effect that there was no condition in the decree requiring

the decree holder to deposit the money within a stipulated period. The said order having attained finality cannot be open to challenge by the petitioners as is sought to be raised.

Accordingly, I find no merit in the present revision petition. It is accordingly dismissed.

(Vinod K.Sharma)
November 3,2006 Judge
rp